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ABSTRACT

This handbook presents information and answers questions for persons with mental illness who are in trouble with the law and need legal representation. Topics addressed include finding and hiring a lawyer, the lawyer's role and responsibilities, how a mental illness may affect court proceedings, and the legal process. A second section contains information geared specifically toward families of persons with mental illness. (GCP)

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MENTAL ILLNESS, YOUR CLIENT AND THE CRIMINAL LAW

A Handbook for Attorneys
Who Represent Persons With Mental Illness

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Texas Appleseed Mission

Texas Appleseed's mission is to promote justice for all Texans by working to give a voice to individuals and groups that are otherwise overlooked in the legal process. Texas Appleseed has worked on some of the state's most pressing problems. Our work to improve the rights of poor people in the criminal justice system alerted us to the special needs of defendants with mental illness and their families. We hope this handbook will help persons with mental illness and their families more easily navigate the criminal justice system.

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Finding Help When You're in Trouble With The Law:

A Handbook for Persons with Mental Illness and Their Families

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Section 1

For Persons With Mental Illness

YOU HAVE BEEN ARRESTED.

You may never have been in this situation before and you don't know what's going to happen to you. Whom should you call? What are your rights? One of the first questions you may ask yourself is, ***"Do I Need a Lawyer?"*** *And if you do need lawyer, how can you find one?*

This section answers questions that you may have when you are in trouble with the law and need legal representation.

WHAT SHOULD I TELL THE POLICE AND OTHERS WHO WANT TO INTERVIEW ME ABOUT MY CASE WHILE I AM IN JAIL?

You have the right to remain silent. If you talk to anyone other than your lawyer—including police, investigators, prosecutors, court employees, fellow jail inmates, or friends—about the events that led to your arrest, you should expect that what you say will be used against you. If anyone asks about your case, don't talk to them unless your lawyer advises you to do so or is present. Don't write or sign anything except your request for a lawyer. You can exercise your right to remain silent at any time, place, or way you choose. In fact, if possible, do not speak to anyone without first talking to your lawyer.

DO I NEED A LAWYER?

It is almost always better to be represented by a lawyer in a criminal case than to try to handle the case yourself. This is especially true when jail time or a prison sentence may result from your case. If you cannot afford to hire a lawyer, the judge should appoint a lawyer to represent you.

HOW CAN I FIND A LAWYER IF THE JUDGE DOES NOT APPOINT ONE TO REPRESENT ME?

You can ask lawyers you know, friends, and relatives for the name of a lawyer to represent you. Some communities have a lawyer referral service, or you can call the local bar association for a referral. Lawyers are usually recommended according to their experience and the type and seriousness of the criminal charge. Local support groups for persons with mental illness and their families may be able to suggest a lawyer who has experience in representing people with mental illness.

WHAT SHOULD I KNOW ABOUT HIRING A LAWYER?

You should interview a lawyer before you hire one. In fact, you may want to speak to at least two lawyers so you can compare. Lawyers often consult with a potential client at no charge. Ask about this when you call for an appointment.

Once a lawyer has agreed to take your case, the lawyer may want a significant part of the money "up front." However, many lawyers will work out a payment schedule with you. Be cautious with any lawyer who is not straightforward about his or her fees. The lawyer should explain the fees that you will be charged. In fact, you should get a written agreement about the fees from the lawyer. This can be a signed contract or a letter from the lawyer setting out the fee agreement. Carefully study any agreement that a lawyer asks you to sign.

You may be charged one fee for pretrial services and another fee if the case gets set for a trial. There may be additional fees if the lawyer needs to hire an investigator, copy records, or file pretrial motions.

No lawyer can guarantee a positive outcome for your case. Too many things can happen that are beyond a lawyer's control. Your lawyer should, however, explain all the possible outcomes of your case and give you his or her best guess about what might happen.

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It is helpful for your lawyer to have experience in the local courthouses. The lawyer should also have had previous experience representing people charged with similar offenses. Some lawyers specialize in certain types of offenses. A lawyer who is "board certified" by the Texas Board of Legal Specialization has experience and training in a particular area of the law, such as criminal law. However, there is no board certification available in mental health law. Unfortunately, few lawyers have much experience or training working with persons who have mental illness. You should ask about your lawyer's training and experience.

IF I AM CHOOSING MY OWN LAWYER, WHAT SHOULD I ASK MYSELF?

- Does the lawyer seem like someone I can work with and talk openly with?
- Does the lawyer explain things in a way that I can understand?
- Does the lawyer show personal concern and a genuine desire to help me?
- Is the lawyer concerned about my overall personal situation or just with the crime I'm charged with?
- Does this lawyer understand what mental illness is and what treatment is?
- Has she or he expressed any interest in my treatment history?
- If the lawyer is not familiar with mental illness or mental disability, is the lawyer willing to listen and learn more about it?
- Does this lawyer appear trustworthy? Will he or she appear trustworthy to others?
- Do I know anyone else who has used this lawyer? Do they recommend this lawyer?

WHAT IF I CAN'T PAY WHAT THE LAWYER ASKS?

Many lawyers will work out a payment plan with clients who are unable to pay their full fees. You should discuss this with the lawyer. Maybe she or he can extend the payment period or reduce the fee. If you can't work out a payment plan, ask the lawyer to refer you to another lawyer who has reduced fees.

WHAT IF I CAN'T AFFORD A LAWYER?

If you cannot afford a lawyer, the court is required by law to provide you with one and to pay for it, if the crime you are charged with is one for which you could possibly be sentenced to jail or prison. Many, many people–well over half of those who appear in court in Texas–need a court-appointed lawyer. Sometimes this court-appointed lawyer will be from a local public defender's office. There is no reason to feel ashamed or embarrassed about having the court appoint a lawyer for you. This is your right under both the U.S. and Texas Constitutions. You should not assume that a court-appointed lawyer will not be as good as a lawyer whom you hire.

Unfortunately, in Texas it has been impossible to say with certainty who qualifies financially for a court-appointed lawyer or public defender. Each judge has made his or her own decisions about who qualifies for getting a free lawyer. However, a new state law requires each county to adopt and publish guidelines to determine who qualifies for a court-appointed lawyer. These guidelines must take into account your income, source of income, assets, property, debts, necessary expenses, the number and ages of any dependents, and any income of your spouse that is available to you. If possible, bring to your first court date proof of your income (like a pay stub), any payments or debts you have (such as child support, loans, or other debt), records of any disabilities you have that might keep you from working, and the names and price quotes of several lawyers. Be sure to tell the judge if you receive food stamps, any type of government payment, disability benefits, or other assistance. Be polite and courteous to the judge. Do not go into the details of your case with the judge while discussing your need for a lawyer. If you can prove you are unable to work or hire your own lawyer, the judge will probably appoint one to you.

Some judges may have you fill out a financial form; others will just ask you questions. When filling out such forms or answering such questions, be accurate, but think carefully and be sure to report all of your expenses. If you have unusually high expenses, be sure to highlight that to the court (for example, high medical bills, prescription drug bills, or educational expenses). Many judges will have you talk with their court coordinator or other court staff about your financial situation before you

talk to the judge. Courts determine your eligibility for a free lawyer according to your income and resources, not those of your family.

The judge expects you to hire your own lawyer if at all possible. Judges appreciate people who provide proper financial information when requesting a lawyer. If the judge determines you are not qualified for a court-appointed lawyer, she or he will give you a limited time–usually one or two weeks–to try to hire one before your first court date. It is important to try to talk to several lawyers before your first court date so you can be prepared to hire a lawyer if you don't qualify for a court-appointed one.

IF I GET OUT ON BAIL, WILL THE COURT STILL PROVIDE A FREE LAWYER FOR ME?

The law says that you are entitled to have a lawyer appointed to you if you are charged with an offense that could carry a jail or prison sentence and cannot afford one, regardless of whether you get out on bail. Under new state law, the judge must appoint a lawyer to represent you if you qualify under the financial guidelines published by the county, whether or not you are out on bail. Make sure the judge or the court coordinator clearly understands that even though you posted bail, you may not be able to afford a lawyer.

WHEN WILL A LAWYER BE APPOINTED TO REPRESENT ME?

Under new state law, a lawyer should be appointed to you within 4 to 6 days of your arrest if you are in jail. If you are out on bail, you should have a lawyer appointed as soon as possible, at least by the time you must first appear before a judge or prosecutor.

Within 48 hours after you are first arrested, you should be taken for an appearance before a magistrate (usually a justice of the peace or municipal judge). The magistrate will read the charge against you, set your bail, and inform you of your right to request a court-appointed lawyer. You should be given the opportunity to request a lawyer at this point. Once you request a lawyer, your request is forwarded to the judge or court official that will decide whether you get a court-appointed lawyer.

CAN I CHOOSE WHICH LAWYER THE JUDGE APPOINTS TO REPRESENT ME?

No, but your lawyer must be qualified to handle your case. Lawyers must meet minimum qualifications under the law. If you tell the court coordinator or judge that you have mental health needs or a history of mental illness, he or she may appoint a lawyer with special experience in this area.

EVEN IF THE JUDGE APPOINTS A LAWYER TO ME, WILL I STILL HAVE TO PAY SOMETHING?

If you plead guilty or are found guilty by a jury, at the conclusion of your case, the judge will probably require you to pay back the county for a portion of the court costs. These court costs, which may include lawyer's fees, usually amount to several hundred dollars. This may sound like a lot, but it is probably less than a hired lawyer would charge. There may also be fines to pay that are part of your sentence. If you cannot pay the court costs or fines, you may be able to make payments or pay the court back through volunteer work. In a few cases, the fee may be waived. Ask your lawyer if you will be allowed to make payments. If you are found guilty and placed on probation, paying certain fees may also be made a requirement or condition of your probation. It is especially important to notify the judge and your lawyer of your inability to pay in this case, because failing to pay court-ordered fees may violate your probation and result in your being sent to jail.

If the judge determines that you were able to pay but did not pay, you could be arrested and placed in jail to serve out the fine. However, you should not be required to spend additional time in jail just because you cannot pay fines and fees. You should tell your lawyer if this happens to you.

In some cases, the court may decide that you cannot afford the full cost of a lawyer, but you can contribute some money toward getting a lawyer. In those cases, the court may give you an appointed lawyer, but make you pay some money "up front" for that lawyer.

I'VE HEARD THAT HIRED OR "FREEWORLD" LAWYERS ARE BETTER THAN COURT-APPOINTED LAWYERS. IS THIS TRUE?

Just as there are good and bad private lawyers, there are good and bad court-appointed lawyers. Some lawyers will spend time with you, get to know your case, and put up a good defense; some will not.

When evaluating your lawyer's performance, you may want to consider the following:

- the lawyer's experience or training in working with people who have mental illness; whether or not the lawyer pays attention to you, listens to you or returns your calls; and

- whether or not the lawyer seems overloaded trying to handle a large number of cases at the same time; and whether the lawyer is willing to go to trial if necessary and can give you a good reason either for going to trial or for pleading.

If you believe your lawyer is ineffective, tell the judge. You may be able to get a different lawyer.

MY LAWYER HAS NOT COME TO SEE ME AND MY COURT DATE IS COMING UP. WHAT SHOULD I DO?

Your lawyer is supposed to act promptly in representing you. If you are in jail and have asked for a court-appointed lawyer, your lawyer should make some sort of contact with you within one business day of being appointed and should visit you as soon as he or she can after that. Your lawyer should, if possible, seek your release from jail or seek dismissal of your charges. He or she should get a psychiatrist to examine you if it is necessary, and try to handle your case without delays. If your lawyer has not come to see you while you are being held in jail or within a reasonable time after she or he is appointed, you should get word to the judge or have your family contact the lawyer or the judge to make sure your case has not been overlooked.

WHAT IS MY LAWYER'S JOB?

Your lawyer's job is to vigorously represent your interests and defend you to the best of his or her ability. She or he should give loyal and individual attention to your case. Your lawyer should treat you with attention and respect, no matter who you are or what you are accused of doing.

Both you and your lawyer have responsibility for making decisions about your case. Some decisions are yours alone, but your lawyer's advice will be very important as you make those decisions. For example, it is your decision what plea to enter with the court, whether to testify, whether to waive a jury trial, and whether to accept a plea agreement. Your lawyer should be making decisions about what witnesses to call, how to question witnesses, what jurors to accept for your trial, and what evidence to introduce. Your lawyer should consult with you on these things, and you should respect your lawyer's knowledge and expertise on these matters. Your lawyer is not required, even if you are paying her or him, to do everything you want. For example, your lawyer may insist that you get examined by a doctor before he or she continues with your case, and you may not want this. If this happens, you should understand that your lawyer does not wish to make you angry, but wants to make sure that you can understand what is taking place and that you are able to help him or her with the case. It is also your lawyer's job to try to get the best sentence possible for you if you decide to plead or are found guilty.

WHAT SHOULD I EXPECT FROM MY LAWYER AS THE CASE PROGRESSES?

The success of your case depends largely on the facts of the case and the type of evidence and witnesses that are available. It also depends on your lawyer's background and legal skills and the kind of relationship you have with the lawyer. A good relationship is a partnership. Your lawyer should be willing to actively involve you in decision-making about your case. You should feel personally comfortable with the lawyer because this is the person who will be speaking for you.

Your lawyer should keep you informed about the case and the progress she or he is making. He or she should also answer reasonable requests from you in a prompt manner. Your lawyer should explain developments in the case to you in a way that helps you make informed decisions about the case and about how you would like the lawyer to represent you. The case is yours, not your lawyer's, and you have a right to know about your lawyer's progress.

WHAT SHOULD I TELL MY LAWYER?

You should be as honest as possible with your lawyer about your life, health, mental health history, and about the events surrounding your arrest. Some lawyers may be able to help you talk to your landlord or employer about not evicting or firing you while your legal case is pending. You should let your lawyer know if you are seeing a doctor for mental health problems, if you've ever had a serious head injury, if you attended special education classes in school, or if you receive any type of government benefits such as SSI or SSDI. You should tell your lawyer if you have had any jobs or job training. You should also let your lawyer know about any previous problems you've had with the law or times you've been in court. Finally, be sure to tell your lawyer if you are not able to understand what the lawyer is saying to you or do not know what is happening. It is your lawyer's job to help you understand things.

SHOULD I TELL MY LAWYER ABOUT MY MENTAL ILLNESS OR THE FACT THAT I TAKE MEDICATION?

Unfortunately, many people want to hide the fact that they have mental health problems or have received treatment because they are embarrassed or think people will look down on them. But hiding this information from your lawyer can be very bad for your case. For your lawyer to do a good job, she or he must look at all aspects of the case. So it is best to tell your lawyer about your mental illness, your past and current diagnoses, and where you receive treatment, including any medicine you have taken or are taking now. You should tell your lawyer if you have heard voices, especially if you heard voices at the time you were arrested. You should also tell your lawyer if you can't remember the details about some events or if you are confused about when things happened. If you have had problems with any medications, you should tell your lawyer about that too. You should also tell your lawyer the names of doctors, caseworkers, or agencies that work with you. You should allow the lawyer to have copies of your medical records if this will help the lawyer represent you. The lawyer and you can then discuss whether or not to share this with the judge or jury. It may not be important to your case or have any effect on it, but it might help your case a lot. The lawyer is the best judge of this.

SHOULD I TELL MY LAWYER THAT I DRINK OR USE DRUGS?

Yes, especially if you were using alcohol or drugs when you were arrested or if you need or want treatment for drinking or for using drugs. Your lawyer may be able to help you get treatment. Sometimes, whether you are innocent or guilty, you may fear telling your lawyer everything that went on because you think it might look bad for you or that your lawyer will not want to represent you anymore. Maybe you were somewhere you should not have been or were with someone you should not have been with. Remember that your lawyer cannot help you if you keep things from her or him, and your conversations with your lawyer are confidential. Remember also that the prosecutor will be gathering information about you and the case. It will be bad for both you and your lawyer if your lawyer is surprised in court by the prosecutor bringing up facts that your lawyer should have heard from you.

WILL MY LAWYER KEEP EVERYTHING I TELL HIM OR HER CONFIDENTIAL?

Your private conversations with your lawyer are almost always confidential, regardless of whether your lawyer is court-appointed or hired. This means that, except in rare situations, he or she cannot repeat any of your statements to anyone–including prosecutors, employers, friends, or family members–without first getting your consent. If you are concerned about this issue, you should ask your lawyer to explain further.

CAN I ASK MY LAWYER NOT TO TELL THE JUDGE AND JURY ABOUT MY MENTAL ILLNESS?

You may tell your lawyer that you do not want your mental illness or treatment to be brought up in court, and the lawyer must comply with your request. However, if the lawyer believes that you are not able to understand the charges or the court proceedings because of your mental illness, the lawyer must notify the judge. The lawyer can do this without giving specific mental health information to the judge.

MY LAWYER WANTS TO GET A DOCTOR TO COME AND SEE ME IN JAIL AND I DON'T WANT TO SEE A DOCTOR. DO I HAVE TO SEE THE DOCTOR?

If your lawyer or the judge has asked that you be examined by a doctor to see if you are able to participate in your trial, it probably is to your benefit to have this done. However, you should not agree to be examined before you have had a lawyer appointed to represent you. You should talk to your lawyer before talking to any doctor from the courts. And you should realize that this doctor is not there to treat you, just to examine you. This doctor works for the courts and might have to testify about what you said to her or him in court, so you should not discuss the details of your case with this examining doctor. You have the right not to see the court-assigned doctor at all, but you can be sent to the state mental hospital for an evaluation if you refuse to see the court doctor.

WILL I GET OUT OF JAIL QUICKER OR GET A BETTER SENTENCE IF I TELL PEOPLE ABOUT MY MENTAL ILLNESS?

There is never a guarantee that telling people about your mental illness will help you get out of jail more quickly–it might or it might not. Telling your lawyer, however, may assist him or her in getting you treatment or other services you might need. Sometimes in less serious cases (like criminal trespass) judges might agree to drop the charges against you if you agree to get mental health services or treatment. You should seriously consider suggestions from your lawyer to get treatment or services, especially if it will help your case.

IF I DON'T LIKE MY LAWYER OR DON'T THINK MY LAWYER IS DOING A GOOD JOB, CAN I ASK FOR ANOTHER?

Arrested persons sometimes ask judges to fire their appointed lawyers or appoint a new one. They feel that the lawyer does not see eye to eye with them or that the lawyer won't talk to them. Most of the time, judges will not grant a request based on reasons like these. You should first try to open the lines of communication with the lawyer before you take more serious action. Keep a record of your attempts to reach the lawyer and the results. If you can prove that communication between you and your lawyer has completely broken down, you may be able to succeed in getting a new lawyer appointed. If your lawyer agrees that you would be better off with a new lawyer, the judge is more likely to go along with it. Changing lawyers will delay the handling of your case, so it is better to do this early in the case.

IF I DON'T LIKE MY JUDGE, CAN I REQUEST A NEW ONE?

Unfortunately, the law does not allow you as a defendant to request a different judge. But tell your lawyer about your concerns.

WILL I GET A CHANCE TO TELL MY SIDE OF THE STORY TO THE JUDGE OR JURY?

You have the right to decide whether or not you will testify. You should discuss this with your lawyer. If your lawyer believes that it is in your best interest to take the stand and tell your side of the story, he or she will tell you that. Even though you may want to help the judge and jury understand what happened to you, sometimes your lawyer may think that this will make things harder for you or bring about a worse outcome for your case. You may be afraid that people will think you're guilty if you do not get to testify on your own behalf, but your lawyer knows best about what will actually help your case.

WHAT IF MY LAWYER WANTS ME TO PLEAD GUILTY AND I DISAGREE WITH THIS ADVICE?

You should tell your lawyer if you do not want to plead guilty. Your lawyer should then fully advise you about your rights and be honest with you about how she or he thinks your case will be resolved. The two of you should discuss all the options about what to do. Part of your lawyer's job is to determine if the prosecution can prove you are guilty. If your lawyer has said that it is in your best interest to enter a guilty plea, perhaps he or she thinks you will not be able to win your case against the prosecutor if you go to trial. You may think that making a plea agreement is better because it will get you out of jail faster than taking your case to trial, but you should talk to your lawyer about the serious consequences of pleading guilty. Having a criminal record may prevent you from getting jobs or housing in the future. In the end, however, whether or not to plead guilty is your decision, not your lawyer's.

MY LAWYER HAS MADE A DEAL OR BARGAIN WITH THE PROSECUTOR ABOUT MY CASE. CAN I TRUST THIS?

Most cases in Texas and elsewhere are handled not by trial, but as the result of an agreement or "plea bargain." If you and your lawyer have decided it is in your best interest to make a plea agreement, your lawyer will then bargain with the prosecutor to try to get you the best, most lenient sentence possible. Your lawyer should review with you all the options being discussed. If you have questions or do not understand the different choices that your lawyer is discussing with you, you should tell your lawyer. Do not be embarrassed about telling your lawyer that you don't understand what she or he is saying. You are not an expert in the law, and it is your lawyer's job to explain things to you. You may not be able to remember all of the choices that your lawyer is discussing with you. Or maybe you hear things from other people in jail or in the neighborhood that sound different from what your lawyer is saying. Remember, your lawyer is the only person who understands your case completely. Even your lawyer cannot guarantee, however, that a judge will accept the deal that has been worked out. The final decision about your sentence remains with the judge.

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Notes

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Section 2

For Families of Persons With Mental Illness

YOUR FAMILY MEMBER HAS BEEN ARRESTED.

You may never have been in this situation before and you don't know what to do. You are filled with questions and with worry about your family member being in jail. Whom should you call? Does your family member need a lawyer and, if so, how can you find one?

This section answers questions that you may have when your family member is in trouble with the law and needs legal help.

HOW CAN I MAKE SURE THAT MY FAMILY MEMBER GETS MEDICINE IN JAIL? CAN THE LAWYER HELP ME GET MEDICINE FOR MY FAMILY MEMBER?

Your family member has a right to treatment while he or she is incarcerated in jail or prison. This does not necessarily mean that your family member will get good, state-of-the-art care or all of the services he or she needs. But it does mean that the jail must provide your family member reasonable access to medical personnel who are qualified to diagnose and treat illness and reasonable access to medicine. The jail cannot use a lack of staffing or resources as an excuse not to provide treatment.

Your family member may not get medication as soon as he or she wants it or needs it, and he or she may not get the same kind of medicine he or she was taking before entering the jail. Telling the lawyer, the judge, the jail nurse, the jail doctor, and the sheriff that your family member needs medicine and what types of medicine he or she is already taking may help get results more quickly. You may want to write a letter to the sheriff and send it certified mail, return receipt requested. Bringing your loved one's current medication bottles to the jail may also speed up the process. Most jails have strict rules about when and how medicines can be taken by people in custody.

AM I RESPONSIBLE FOR HIRING A LAWYER FOR MY LOVED ONE AND PAYING THE LAWYER'S FEE?

People who cannot afford to hire a lawyer are entitled to a court-appointed lawyer. A person's eligibility to receive a court-appointed lawyer or public defender is based on that person's income, not the family's income. Family ties and loyalties may lead you to offer financial assistance to your family member or to offer to pay for a private lawyer. But you are not legally obligated to pay for the defense of your adult family member. If you can, assist your family member with collecting his or her own financial information to present to the judge at the first court hearing so the judge has a true picture of your family member's inability to afford a lawyer.

WHAT'S THE DIFFERENCE BETWEEN A COURT-APPOINTED PRIVATE LAWYER AND A PUBLIC DEFENDER?

Public defenders are lawyers whose sole job is to represent defendants in criminal cases who cannot afford a private lawyer. They typically appear in the same court on a daily basis and handle the cases assigned to that court. They are paid a salary and work for a government agency or a non-profit organization that has a contract with the government. However, they are paid to represent the interests of their clients, not the interests of the government.

Court-appointed private lawyers are appointed to handle individual cases and are usually paid a certain amount by the county for each case they handle. The judge who appoints the lawyer must approve the payment. Whoever is appointed to handle your loved one's case should put your loved one's interests first and foremost.

DO I HAVE TO PAY MY FAMILY MEMBER'S COURT FEES OR FINES?

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Court fees and fines are your loved one's responsibility, not yours. Sometimes, the court will make arrangements for a payment plan or some type of volunteer work to be done if court fees cannot be paid. If your loved one is placed on probation,

he or she may be required to pay certain fees or fines, including a monthly probation fee. Failure to pay these can result in your loved one being put back in jail. Many families end up paying these fees and fines for their loved one since their family member may not be able to work or may not receive any regular income. In some instances, if a probation officer has evidence that your family member is disabled and cannot work, the officer can ask the judge to drop the monthly probation fee. Each judge handles these requests differently.

IF I KNOW SOMETHING ABOUT MY FAMILY MEMBER'S CASE, WHOM SHOULD I TELL?

Discussing your family member's case with him or her could put you in a very uncomfortable position. Texas does not regard conversations between parents and their adult children as confidential. You might be called to testify at the trial either for or against your loved one. If your family member wants to discuss the case with you, you may want to tell him or her to talk with the lawyer first. A police officer or prosecutor may call you about your family member's case. You do not have to talk to them. If you are called to testify, you should avoid talking about your loved one's case with other witnesses and avoid contact with jurors or potential jurors. If you know something about your family member's case that could help (for example, his or her mental health history or his or her mental state at the time of the alleged offense), you should talk with your family member's lawyer.

MY SON'S LAWYER WILL NOT RETURN MY CALLS. WHAT CAN I DO?

Try to establish open lines of communication with the lawyer from the beginning, before any court appearances. Most lawyers will try to keep up communications with you. However, there are times when the lawyer cannot communicate with you because your family member has requested him or her not to speak with you. Remember, in the end, the lawyer represents your son, not you. If the lawyer consistently does not return your calls, try sending a letter to the lawyer outlining your attempts to contact him or her and describing what information you need or what you would like the lawyer to know about your loved one or the case.

WHAT DO I DO IF I BELIEVE MY DAUGHTER'S LAWYER IS NOT REPRESENTING HER WELL?

First, talk to the lawyer and tell him or her about your concerns. Be very specific. For example, you may believe he or she has not followed up on leads, or you may believe that he or she has ignored evidence. You may feel the lawyer is too busy to fully represent your daughter or that the lawyer has requested too many delays in your daughter's case because he or she is not prepared. You may feel that the lawyer is not explaining all the options to your daughter.

If you are paying for the lawyer, you can fire him or her, and hire a new lawyer. This, of course, will delay your daughter's case. If the lawyer is court-appointed, you and your daughter can try to contact the judge to get a new lawyer appointed. Be very specific with the judge about your concerns. In extreme cases, your daughter can file a grievance against the lawyer with the State Bar of Texas. However, this will not offer an immediate solution to your problem or help to get a new lawyer appointed.

I THINK THE LAWYER SHOULD EMPHASIZE MY FAMILY MEMBER'S MENTAL ILLNESS DURING THE TRIAL, BUT THE LAWYER DISAGREES. WHO DECIDES?

You and the lawyer may disagree about the role that your loved one's mental illness played in the alleged offense or the way to use this information as part of the defense. If you suspect that this may be because the lawyer doesn't understand mental illness and the many ways it might influence a person's thoughts or behavior, do your best to educate the lawyer. Send the lawyer information about your family member's illness and past history.

Some lawyers, however, based on their experience and training, believe that juries are unsympathetic to a defense based on mental illness, especially when violent crimes are involved. They believe that a jury might actually give a harsher sentence to a person with mental illness, so they might try to minimize your family member's mental illness. Talk with the lawyer about this matter.

SINCE I AM PAYING FOR MY SON'S LAWYER, DO I HAVE THE RIGHT TO BE CONSULTED ABOUT HIS CASE, INCLUDING ANY PLEA BARGAINS?

No. Even though you are paying the lawyer's fees, the lawyer's duty and loyalty is to your son and not to you. It is up to your son and his lawyer to decide whether or not to accept a plea bargain. Good lawyers will not allow you to direct or determine what happens with the case just because you have paid the bill. In fact, as frustrating as this may be to you, confidential communications between your son and his lawyer cannot be disclosed to you without your son's consent. If you and your son agree that it would be best for you to talk about some matters with his lawyer, confidentiality can be waived. Talk with the lawyer about this.

CAN I TESTIFY ON MY FAMILY MEMBER'S BEHALF OR TALK ABOUT HIS OR HER HISTORY OF MENTAL ILLNESS IN COURT?

Before the case goes to court, talk to the lawyer about your interest in testifying on your family member's behalf. The lawyer has expertise in court matters and will know best what will help your family member's case. You will have to trust the lawyer's judgment about whether or not your testimony would be helpful. Lawyers sometimes call expert witnesses, such as psychiatrists, to testify in a trial about mental illness because they feel it will help the case. Even if the lawyer thinks it is not in your loved one's best interest for you to testify, you may be able to assist the lawyer in identifying a psychiatrist whose opinion you trust to serve as an expert witness. You may also be able to help the lawyer obtain medical or school records, hospital records, employment records, and the like.

WHAT CAN I DO TO HELP MY FAMILY MEMBER THE MOST?

Listen to your family member. Visit your family member in jail to provide emotional support, comfort, and encouragement. During your visit, note your love one's mental condition, and report any changes or problems you see to the jail nurse, doctor, or MHMR worker and to the lawyer. Let them know if your loved one is more agitated or withdrawn than usual. Stay involved. Your family member may not get the medical attention or services he or she needs in jail without your help and vigilance.

Jails are not always safe places for people with serious mental illness. Your family member may not be treated well by jail staff or other inmates, and may be afraid or unable to complain. If you suspect or know your loved one was taken advantage of or mistreated, you should report this to your loved one's lawyer and to the sheriff. Let the jail staff know if your family member cannot take care of himself or herself or needs to be in a special housing unit away from other inmates. Be the voice of your family member, who may not be able to speak for himself or herself.

Try to establish good, open communication with your loved one's lawyer and stay involved. Perhaps the most helpful thing you can do for your loved one is to assist the lawyer with current, accurate information about your family member. Share information about your loved one's mental health history and other health history, school history, job history, and any problems he or she has had previously with the law. Give the lawyer copies of medical records, hospital records, the names and numbers of doctors and caseworkers. Let the lawyer know if your family member is now or has ever been in mental health or drug/alcohol treatment or has been hospitalized. Let the lawyer know what medications your family member is taking and any recent changes in medication. Tell the lawyer if your family member receives SSI payments or other payments for a disability. Let the lawyer be the judge of whether this information is important to the case. You may also be able to assist the lawyer with locating witnesses or collecting evidence. Let the lawyer know that you care about your family member and what happens with the case. Educate the lawyer about mental illness if she or he needs it. Keep the lawyer on his or her toes and let him or her know you are paying attention to how the case is being handled. Keep track of court dates and times so you can attend.

Finally, seek out some support for yourself. Call your local chapter of the National Alliance for the Mentally Ill or the Mental Health Association. Ask if there are support groups for families available. Ask for people to talk to and things to read that will help both you and your family member through this difficult time.

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Glossary

Of Legal Terms and Phrases

Appearance before a magistrate - an initial proceeding which must occur within 48 hours of arrest where the accused person appears before a judge (usually a justice of the peace or municipal judge), is informed of the charge against him or her, and has bail set. The accused person is given the opportunity to request a lawyer at this appearance and should be informed how to make that request.

Arraignment - a court proceeding prior to trial where the accused person is formally advised of the charges against him or her and his or her rights. The accused person enters a plea.

Bail–a monetary amount set by the judge that must be paid by the defendant if he or she fails to appear in court at an appointed time after being released from custody. It is a guarantee that the accused person will appear in court.

Bond - a document, usually signed by a lawyer or bondsman, that guarantees the payment of the bail amount and permits a person to leave jail. A refundable cash bond can be posted, returnable in full if all court appearances are kept. Sometimes a "personal recognizance" bond is permitted that allows a person to leave custody based only on the person's signed promise to appear in court.

Burden of proof - the evidence that must be presented to convince the judge or jury beyond a reasonable doubt that a person is guilty of the offense.

Complaining witness - most often the victim of the crime; some cases can be dropped or dismissed if the complaining witness requests it.

Continuance - a delay or postponement of a court hearing.

Court-appointed lawyer - a lawyer appointed and paid by a judge to represent a defendant who cannot afford to hire his or her own private lawyer.

Defendant - the person charged with a crime.

Defense lawyer - the lawyer representing the defendant or accused.

District/County attorney - the person who prosecutes the case against the defendant in court on behalf of the "state" or the "people."

Felony - an act or crime that carries the potential punishment of imprisonment for more than one year. Less serious crimes are called misdemeanors.

Grand jury - An appointed body of 12 citizens that meets in a closed, secret proceeding to hear the case against the accused and to determine whether an indictment or formal accusation should be returned and the defendant should be prosecuted for committing a felony offense.

Indictment - a formal accusation returned by a grand jury that has heard information about the case and determined there is a reason to try the case. This is usually required for prosecution of felonies and other serious crimes.

Magistrate - a judge or judicial officer.

Misdemeanor - a criminal offense that is less serious than a felony for which the punishment is usually a fine or imprisonment for less than one year.

Nolo contendere - a plea in which the accused person does not admit guilt but does not contest the charge. It is treated the same as a guilty plea by the court.

Parole - the release of a person from prison to mandatory supervision in the community.

Perjury - deliberate false testimony under oath.

Plea bargain - an agreement between the lawyer representing the defendant and the prosecutor specifying a specific, usually lesser punishment agreed to if the defendant pleads guilty. The agreement may be rejected by a judge.

Pretrial release - a program available in some counties for some defendants where a person is released from custody before trial without having to post a bond if he or she meets certain conditions.

Probation - the granting of freedom to an offender who has been convicted or has pled guilty and agreed to certain conditions set by the court, such as community supervision by a probation officer for a specified period of time; often available for non-violent offenders, and for minor offenses.

Prosecutor - a public official, usually a district or county attorney, who conducts criminal prosecutions in courts against defendants on behalf of the "state" or the "people."

Public defender - a licensed lawyer employed by the county government or an agency that contracts with county government solely to represent defendants who cannot afford a private lawyer.

Punishment hearing - a proceeding held in the absence of a plea bargain if the defendant pleads guilty or if the jury finds the defendant guilty. Punishment is decided by a jury unless the defendant waives that right.

Revocation - the cancellation of probation or parole, which may result in a person's returning to incarceration, due to an allegation that a new crime has been committed or that some other requirement of probation has been violated such as failing to pay court-ordered fines or fees or failing to show up for meetings with the probation officer.

Restitution - payment to a victim by the defendant for damage or loss caused by the defendant.

Sentence - the punishment handed down by a judge or jury to a defendant who has been convicted of a crime or pled guilty.

Time served - a phrase used to describe the situation where a person pleads guilty, usually for a misdemeanor offense, and is released because the time he or she has served in jail before the plea is considered adequate punishment for the crime charged.

Waiver of jury - cases can be tried before a judge rather than a jury in the event the prosecutor and defendant's lawyer and defendant all agree to do so.

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Helpful

Contact Names and Numbers

Name of lawyer _____ Phone _____

Case number _____

Name of judge _____

Court name and number _____

Location of court _____

Name of court coordinator for the judge _____

Phone number for judge/court _____

Phone number for county or district clerk (for information about court schedule) _____

Court date _____ Court time _____

_____ _____

_____ _____

_____ _____

Name of jail doctor or nurse _____ Phone _____

Name of jail mental health worker _____ Phone _____

Phone number of local NAMI group _____

Phone number of local Mental Health Association _____

Phone number of local Bar Association or lawyer referral service _____

FOR DEFENDANTS PLACED ON PROBATION

Name of probation officer _____ Phone _____

Date to report _____ Time _____ Location _____ Fee _____

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